

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER TO BAC
HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS
SERVICING, LP FOR THE BENEFIT OF
HARBORVIEW 2005-7 TRUST FUND,

Case No. 11cv02740 BTM (BGS)

ORDER

Plaintiff,

v.

GREGG MCCALLUM; JOHN
MCCALLUM and DOES 1 through X,
inclusive,

Defendants.

On September 14, 2011, the Plaintiff in the above-captioned matter filed an unlawful detainer action against the Defendants in the Superior Court of California, County of San Diego (Case No. 37-2011-00046865-CL-UD-CTL). On November 22, 2011, Defendant Gregg McCallum filed in this Court a "Notice of Removal from San Diego Superior Court" (Dkt. No. 1) and a "Motion for Leave to Proceed In Forma Pauperis" (Dkt. No. 2). On December 13, 2011, Plaintiff filed a "Motion to Remand to State Court" (Dkt. No. 3). For the reasons set forth below, the Court hereby GRANTS Defendant Gregg McCallum's Motion for Leave to Proceed In Forma Pauperis and REMANDS this case to San Diego Superior Court.

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1 **I. Motion for Leave to Proceed In Forma Pauperis**

2 Defendant Gregg McCallum, a nonprisoner proceeding pro se, has not paid the \$350
 3 civil filing fee required to remove this action, and instead seeks leave to proceed in forma
 4 pauperis pursuant to 28 U.S.C. § 1915(a). 28 U.S.C. § 1915(a) allows the Court to authorize
 5 a party to proceed in a federal case without prepayment of fees if that party submits an
 6 affidavit, including a statement of all his assets, showing that he is unable to pay filing fees.
 7 See 28 U.S.C. § 1915(a). Defendant Gregg McCallum has submitted an affidavit
 8 establishing that he lacks the financial resources to pay filing fees. The Court therefore
 9 GRANTS Defendant Gregg McCallum's Motion for Leave to Proceed In Forma Pauperis.

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11 **II. Subject-matter Jurisdiction**

12 Plaintiff's motion to remand correctly argues that the Court lacks subject-matter
 13 jurisdiction over Plaintiff's state court complaint. Plaintiff's complaint (attached as an exhibit
 14 to Plaintiff's Request for Judicial Notice, Dkt. No. 3-3) brings no claim other than unlawful
 15 detainer pursuant to California Code of Civil Procedure § 1161a. Unlawful detainer actions
 16 arise under state law and do not require resolution of a substantial question of federal law.
 17 See U.S. Bank Nat'l Ass'n v. Lasoff, 2010 WL 669239 (C.D. Cal. Feb. 23, 2010) (holding that
 18 unlawful detainer action did not raise a federal question); HSBC Bank USA, NA v. Valencia,
 19 2010 WL 546721 (E.D. Cal. Feb. 10, 2010) (remanding unlawful detainer action); Wells
 20 Fargo Bank, Nat'l Ass'n v. Cencil, 2010 WL 2179778 (N.D. Cal. May 27, 2010) (granting
 21 motion to remand unlawful detainer action). Any federal defenses or counterclaims
 22 Defendant may wish to bring do not give rise to federal question jurisdiction. Franchise Tax
 23 Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 14 (1983) (explaining that a case may
 24 not be removed to federal court on the basis of a federal defense). Because this action
 25 arises under state law and does not require resolution of a substantial question of federal
 26 law, the Court REMANDS this action. See 28 U.S.C. § 1447(c) ("If at any time before final
 27 judgment it appears that the district court lacks subject matter jurisdiction, the case shall be
 28 remanded.")

1 **III. Conclusion**

2 For the reasons set forth above, the Court **GRANTS** Defendant Gregg McCallum's
3 Motion for Leave to Proceed In Forma Pauperis and **REMANDS** this action to the Superior
4 Court of California, County of San Diego.

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6 **IT IS SO ORDERED.**

7 Dated: December 15, 2011

Barry Ted Moskowitz
HONORABLE BARRY TED MOSKOWITZ
United States District Judge

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